IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 1002 of 2006

Shri Mahaveer Babu Madnaik ..Petitioner

vs.

1. Shri Shantinath Babu Madnaik
and others ..Respondents.

Shri N.J.Patil for petitioner
Shri R.G.Ketkar for respondent nos. 1 to 5.
Shri T.S.Ingale for respondent no.6

CORAM: S.B.MHASE J.
13th April, 2006

P.C.

1. Heard the learned Counsel for the parties.

2. Reg.Civil Suit No.101 of 2005 has been filed by the present petitioner/plaintiff in the Court of Civil Judge, Jr.Dn., Jaisingpur claiming partition of one half share. In the said suit, it is further claimed that sale deed dated 29th September,2004 is not binding on the petitioner/plaintiff and that the sale deed dated 1st February, 2005 be declared void and further injunction to the extent that joint possession of the plaintiff shall not be disturbed. In the said suit application Exh.5 was submitted claiming injunction to the effect that the defendants shall not create third party interest and that the joint possession of the plaintiff shall not be disturbed. That application was rejected by the Trial Court. Thereafter appeal was preferred before the Additional District Judge, Jaysingpur being Misc.Appeal

no.29 of 2005. The appeal is also dismissed. It is pertinent to note that prior to filing of the above referred suit, Reg.Civil Suit No.23 of 2005 has also been filed by the plaintiff in respect of block no.186 which is one of the properties from the suit referred to above. That suit has been filed on the ground that the property be declared as belonging to the plaintiff/petitioner in view of the partition deed dated 1st February, 2005. Basically if the pleadings in both the suits are taken into consideration, they prima facie destroy the pleadings of petitioner and make out inconsistent case. This refrains me to make further comment on the merits of the case since yet the trial of both the suits is to take place land findings of fact and application of law by the Trial Court is yet to take place. Since judicial process in the trial Court is not complete, this Court refrains from making any observations. Suffice it to say that at this stage inconsistency in the pleadings and concurrent findings of facts recorded at the interlocutory stage by both the courts below refrains this Court from entertaining the petition. Under these circumstances, the petition is rejected.

3. The learned Counsel for the petitioner submits that hearing of the suit be expedited. Learned counsel for the respondents have no objection. Therefore, the Trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of six months.

(S.B.MHASE J.)